

konovitz

31776

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-219327, B-219327.2, **DATE:** July 24, 1985  
B-219327.3, B-219328, B-219329  
**MATTER OF:** The W. H. Smith Hardware Company

## DIGEST:

GAO will not review Small Business Administration (SBA) decision regarding the responsibility of a small business, absent a showing of possible fraud or bad faith on the part of contracting officials. Where protester alleges bad faith on the part of contracting officials, but matter is presently before SBA for certificate of competency decision, GAO will not consider allegation until SBA issues its decision and only if SBA declines to issue certificate of competency.

The W. H. Smith Hardware Company (Smith) protests the award of contracts to any firm other than Smith under solicitations Nos. DLA700-85-B-0413, DLA700-85-B-0382, DLA700-85B-0286, DLA400-85-R-3039 and DAAJ01-85-B-A143, issued by the Defense Logistics Agency (DLA).

We dismiss the protests.

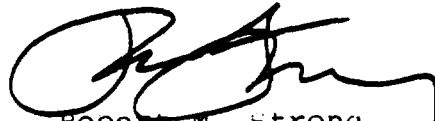
DLA found Smith nonresponsible in connection with these solicitations and referred the matter to the Small Business Administration (SBA) for the possible issuance of a certificate of competency (COC). Smith complains that SBA has delayed making final COC determinations in order to consider DLA reports which, according to Smith, improperly assess the firm's delinquency ratio on prior contracts. Smith maintains that DLA's submission of these reports to SBA shows bad faith on the part of that agency's procuring officials. Smith also complains that each of the COC applications is not "being evaluated separately on its merits."

032663

Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to determine the responsibility of small business concerns by issuing or refusing to issue a COC. Generally, we will not review the SBA's decision in this regard unless there is a showing of fraud or bad faith on the part of contracting officials or SBA did not allegedly follow its own regulations or consider material information in reaching the decision. Belex Enterprises, Inc., B-216974, Dec. 11, 1984, 84-2 C.P.D. ¶ 653.

While Smith has alleged bad faith and other improprieties on the part of government officials, we will not presently consider the firm's allegations because SBA has not yet made its COC determinations. SBA may issue the COC's in which case there would be no need for a decision from GAO. If SBA declines to issue the COC's, then Smith may protest to GAO, and we will examine its allegations and determine whether the circumstances permit our review of SBA's determinations. Belex Enterprises, Inc., B-216974, supra.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General  
Counsel